

March 24, 2025

Senator Anne Carney
Representative Amy Kuhn
Joint Standing Committee on Judiciary

RE: *LD 1175 “An Act Regarding the Appointment and Payment of Counsel for Indigent Parents and Minors”*

The Maine Commission on Public Defense Services submits the following testimony in opposition to LD 1175.

LD 1175 seeks to have MCPDS pay for legal services which are already being provided to indigent Mainers but are currently paid for by the Maine Judicial Branch or County Probate Courts. Currently MCPDS already pays for some of these services when counsel is appointed by the District Courts where the law *requires* the court to appoint counsel such as for non-consenting parents in minor guardianship cases.

Changing MCPDS’s statutes to obligate it to pay for both required *and discretionary* Court appointments fundamentally changes the scope of PDS’s services and will result in cases where PDS will be paying for both the prosecuting and defense sides of the same case. PDS firmly believes its services should be solely for defending the Constitutional rights of Mainers, not assisting in their abrogation.

MCPDS has concerns that the way this bill is drafted, by adding PDS directly into the Probate Code as the guarantor of payment for these services, would obligate PDS to pay not just for appointments out of the District Courts but also any assignments of counsel made by the Probate Courts in these case types. Currently assignments at the Probate Court level are still paid for out of Probate Court funds allocated from county budgets for those purposes.

LD 1175 does not quantify the current costs for these services at either the County or District Court levels, or what appropriations are already made in the state budget to cover the provision of these services. PDS is also unsure what the long-term budgetary impact of statutorily obligating it to pay for “discretionary” assignments of counsel will be. PDS believes this needs to be referred for further analysis for the fiscal impact this would have on the State Budget.

This bill also directs MCPDS to pay for “reasonable costs and expenses” incurred by these case types. Currently PDS’s rate of compensation for attorney services is codified in 94-649 C.M.R. ch. 301, §2(1). This is a major substantive rule which requires legislative authorization for any changes. This legislation could be read as giving the courts the authority to order payment of fees that could be above and beyond the set rate of compensation for other PDS work. This would also make it difficult to forecast the impact this would have on PDS’s budget because the rate of compensation would essentially be at the discretion of the District Court and Probate Judges.

PDS is currently facing a lawsuit by the ACLU and has been found by the court to have failed to discharge our Constitutional duties to indigent defendants in this State. It is ill advised to expand PDS's responsibilities into areas where there is not a Constitutional right to counsel at this time. If anything, this agency should sharpen its focus and use all its resources to address the Constitutional crisis and not further water down its services.

If it is helpful to the Committee, we will make every effort to ensure a member of staff is available to attend the work session for this bill if provided advanced notice by the Committee.

/s/ Jim Billings

Jim Billings

Executive Director

MCPDS